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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,607	01/28/2002	Brian Sullivan	61750.03US1	3972

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NEAL, GERBER, & EISENBERG  
SUITE 2200  
2 NORTH LASALLE STREET  
CHICAGO, IL 60602

EXAMINER

ZERR, JOHN W

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/058,607

Applicant(s)

SULLIVAN, BRIAN

Examiner

John W. Zerr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2003 & 09 September 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-17 and 23-37 is/are pending in the application.
- 4a) Of the above claim(s) 23-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-8 and 37 is/are rejected.
- 7) ☒ Claim(s) 9-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 31 July 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the engaging surface being a notch, the retainer being a latch and the retainer being a pin must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification does not provide an antecedent basis for embodiments of the invention wherein the retainer rotates and slides (Claim 6), wherein the retainer rotates and is a latch (Claim 8), and wherein the retainer rotates and is a pin (Claim 9).

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 37 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Benkoe (USPT 3,022,779, previously cited). Benkoe discloses toy guns capable of firing a paintball projectile comprising a grip (10) and a receiver (12) hingedly attached to the grip (10) so that the grip (10) and the receiver (12) can move from an adjacent position to an open position. A

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projection (60) is placed on the receiver (12). A retainer (46) is fixedly attached to the grip (10). The projection (60) and the retainer (46) cooperate to selectively engage each other, to maintain the grip (10) and the receiver (12) in a fixed relationship. The projection (60) is capable of receiving the retainer (46) and the retainer (46) is capable of moving from a first position to a second position, engaging the projection (60) in one position and disengaging it in another. The projection (60) has an engaging surface adapted to mate with the retainer (46). The retainer (46) is positioned to mate with the engaging surface in the first position and to disengage the engaging surface when rotated into the second position. The retainer (46) slides from the first position to the second position. The engaging surface of the projection (60) is a notch. The retainer (46) is a latch (see Figures 1, 2, 3 & 4 and column 2 lines 1-39). In the Remarks section of the response Applicant's Attorney indicates that the subject matter of Claim 37 reflects the subject matter of original Claims 1-5, of which 5 was found to be allowable. However Claim 37 does not, in fact, incorporate all of the subject matter of Claims 4 and 5 but broadly adds a limitation that the retainer rotates to engage and disengage the engaging surface, which is a broad recitation of a limitation found in original Claim 5. Claim 37 does not adequately incorporate all of the subject matter of Claims 4 and 5 to overcome a rejection based upon Benkoe reference. Examiner would be more than happy to reconsider claim containing all of the limitations of original Claims 1-5.

***Allowable Subject Matter***

5. Claims 9-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and

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any intervening claims. Note that Claim 9 contains subject matter not adequately supported by the Specification and the Drawings and that amendment to rectify these deficiencies could be considered as new matter.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John W. Zerr whose telephone number is (703) 306-0153. The examiner can normally be reached on M-Th. 8:00am-5:30pm, F 8:00am-4:30pm, alt. F off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on (703) 306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

JWZ  
10/30/03

*Charles T. Jordan*  
CHARLES T. JORDAN  
SUPERVISOR, EXAMINER  
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